

STATUTES & REGULATIONS

KANSAS SECRETARY OF STATE SCHEDULE OF INFORMATION AND SERVICE FEES:

K.A.R. 7-16-1.

7-16-1. Information and services fee. In addition to any other fees specified in regulation or statute, the fees prescribed in the secretary of state's "schedule of information and services fees," dated May 27, 2010 and hereby adopted by reference, shall be charged by the secretary of state. (Authorized by and implementing K.S.A. 2009 Supp. 75-438 and L. 2009, ch. 47, sec. 35; effective, T-7-7-1-03, July 1, 2003; effective Oct. 10, 2003; amended Oct. 31, 2008; amended, T-7-7-1-10, July 1, 2010; amended Sept. 10, 2010.)

KANSAS SECRETARY OF STATE SCHEDULE OF INFORMATION AND SERVICES FEE MAY 27, 2010

DIVISION/ACTIVITY	FEE
ADMINISTRATION	
Apostille	\$ 2.50
Authentication	\$ 2.50
Athlete Agent registration	\$ 15.00
Labor Union/Business Agent registration	\$ 4.50
Labor Union Annual Report	\$ 17.00
Notary Public appointment	\$ 12.00
Notary Public training	\$ 25.00
Service of Process	\$ 7.00
Pre-paid account charge	\$ 2.00 per month
Returned check charge	\$ 25.00
KS Register publication fee	\$ 1.00 per inch
Preneed Cemetery Merchandise Contract	\$ 20.00 per contract
Burial or Interment Space	\$ 20.00 per burial or interment space

PREARRANGED FUNERAL AGREEMENTS:

K.S.A. 16-301 through K.S.A. 16-310.

16-301: Prearranged funeral agreements; conditions. Any agreement, contract or plan requiring the payment of money in a lump sum or installments which is made or entered into with any person, association, partnership, firm or corporation for the final disposition of a dead human body, or for funeral or burial services, or for the furnishing of personal property or funeral or burial merchandise, wherein the delivery of the personal property or the funeral or burial merchandise or the furnishing of services is not immediately required, is hereby declared to be against public policy and void, unless all money paid thereunder shall be deposited in a bank or savings and loan association which is authorized to do business in this state and insured by a federal agency, or invested in a credit union which is insured with an insurer or guarantee corporation as required under K.S.A. 17-2246, and amendments thereto, all as herein provided, and subject to the terms of an agreement for the benefit of the purchaser of the agreement, contract or plan. For the purposes of this act, personal property or funeral or burial merchandise shall include caskets, vaults and all other articles of merchandise incidental to a funeral service, but shall not include grave lots, grave spaces, grave memorials, tombstones, crypts, niches and mausoleums. This act shall not prohibit the funding of a prearranged funeral agreement with insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state.

History: L. 1953, ch. 54, § 1; L. 1973, ch. 86, § 1; L. 1976, ch. 97, § 1; L. 1983, ch. 76, § 1; L. 1989, ch. 48, § 70; L. 1994, ch. 229, § 3; L. 2002, ch. 106, § 1; July 1.

16-302: Same; payments, form and deposit of; exceptions. (a) Except as authorized by K.S.A. 16-308, and amendments thereto, all funds received pursuant to any agreement, contract or plan governed by K.S.A. 16-301, and amendments thereto, shall be deposited in a bank, credit union or savings and loan association and shall be held by such bank, credit union or savings and loan association in a separate account in the name or names of the purchaser of the merchandise or services and the name of the seller, until released as herein provided.

(b) In addition to the requirements under subsection (a) and except as otherwise provided in subsection (c), a seller which accepts payment under any agreement, contract or plan governed by K.S.A. 16-301, and amendments thereto, shall:

- (1) Require such payments to be made in the form of checks, cashier's checks or money orders payable only to the bank, credit union or savings and loan association where deposited; and

- (2) deposit such payment in such bank, credit union or savings and loan association within seven business days after receipt.

(c) A seller of agreements, contracts or plans governed by K.S.A. 16-301, and amendments thereto, shall be exempt from the requirements of subsection (b) if the seller maintains commercial insurance providing minimum coverage of \$100,000 against employee dishonesty. A seller of agreements, contracts or plans governed by K.S.A. 16-301, and amendments thereto, which is exempt from subsection (b) under this subsection and which accepts payment under any such agreement, contract or plan shall deposit such payment in a bank, credit union or savings and loan association within 30 days after receipt. Evidence of the commercial insurance maintained for compliance with this subsection shall be provided to the secretary of state within 10 days of a written request.

(d) Each funeral establishment which accepts payments from a purchaser under an agreement, contract or plan governed by K.S.A. 16-301, and amendments thereto, and is exempt from subsection (b) under the provisions of subsection (c), shall file with the state board of mortuary arts at the time of each funeral establishment license renewal required under K.S.A. 65-1729, and amendments thereto, evidence of the commercial insurance maintained for compliance with subsection (c). If such insurance lapses, is cancelled or otherwise ceases to be maintained by the funeral establishment, the insurance carrier shall notify immediately the state board of mortuary arts and the secretary of state of such occurrence.

History: L. 1953, ch. 54, § 2; L. 1973, ch. 86, § 2; L. 1976, ch. 97, § 2; L. 1983, ch. 76, § 2; L. 1989, ch. 48, § 71; L. 1991, ch. 68, § 1; L. 1992, ch. 127, § 1; July 1.

16-303: Same; payments and earnings; credit life insurance; irrevocable agreements. (a) Except as authorized by K.S.A. 16-308, and amendments thereto, all payments made under such agreement, contract or plan, and any earnings or interest thereon, shall remain with such bank, credit union or savings and loan association until the death of the person for whose service the funds were paid or, except as provided in subsection (c), until demand for payment is made by the purchaser of the merchandise or services to the bank, credit union or savings and loan association, and upon such payment to the purchaser, the contract shall terminate.

(b) At the option of a purchaser, any installment contract may provide for additional payments by the purchaser for the cost of group credit life insurance at such rate as is approved from time to time by the insurance commissioner. In the event of the death of the purchaser, the proceeds shall be treated as funds in accordance with K.S.A. 16-304, and amendments thereto.

(c) At the option of the purchaser, such agreement, contract or plan may be made irrevocable as to the retail price of a casket, urn and outside burial container and as to the first \$5,000 of funds paid and set aside at the direction of the purchaser. Any interest and earnings accumulated under the agreement, contract or plan may also be irrevocable. This option shall not prohibit the purchaser to designate a different funeral home at any time prior to death, after

written notice to the current funeral home, and upon such notification all documents and funds shall be transferred as necessary.

History: L. 1953, ch. 54, § 3; L. 1973, ch. 86, § 3; L. 1976, ch. 97, § 3; L. 1982, ch. 90, § 1; L. 1983, ch. 76, § 3; L. 1989, ch. 48, § 72; L. 1991, ch. 68, § 2; L. 1998, ch. 55, § 1; L. 2004, ch. 41, § 1; July 1.

16-304: Same; payments upon death, conditions; balances; notice; liability. (a) If any balance remains in the account upon the death of the person for whose services the funds were paid, the same shall not be paid by such bank, credit union or savings and loan association to the person, association, partnership, firm or corporation until a certified copy of the death certificate of such person, a verification of death form or other acceptable proof of death shall have been furnished to the bank, credit union or savings and loan association, together with a verified statement setting forth that all of the terms and conditions of such agreement have been fully performed by the person, association, partnership, firm or corporation.

(b) If any balance remains in the fund after disposition of the fund in accordance with the terms of the agreement, contract or plan such balance shall inure to the benefit of the estate of the purchaser of the agreement, contract or plan unless the purchaser was a person who received medical assistance from the department of social and rehabilitation services or a deceased surviving spouse of a recipient of medical assistance and the bank, credit union or savings and loan association has received written notice from the department of social and rehabilitation services, the funeral home or the recipient, stating that medical assistance has been expended on the recipient for which the department of social and rehabilitation services may have a claim. If such notice has been received, the balance shall be paid to the secretary of social and rehabilitation services or the secretary's designee to the extent of medical assistance expended on the deceased recipient.

(c) The bank, credit union or savings and loan association shall not be liable to the department of social and rehabilitation services for the balance in the fund if written notice has not been received and the balance of the fund has been paid to the estate of the purchaser of the agreement as provided above.

History: L. 1953, ch. 54, § 4; L. 1973, ch. 86, § 5; L. 1976, ch. 97, § 4; L. 1983, ch. 76, § 4; L. 1989, ch. 48, § 73; L. 1996, ch. 123, § 1; L. 2002, ch. 106, § 2; L. 2004, ch. 36, § 1; L. 2006, ch. 71, § 1; July 1.

16-305: Same; penalties. Every person who violates any provision of this act: (a) Other than by misappropriating funds in violation of an agreement shall be guilty of a misdemeanor, and, upon conviction shall be fined not less than \$100 nor more than \$500, or shall be imprisoned for not

less than 10 days nor more than 90 days, or both; and (b) by misappropriating funds in violation of an agreement in an amount:

- (1) Of \$25,000 or more shall be guilty of a severity level 7, nonperson felony;
- (2) of at least \$1,000 but less than \$25,000 shall be guilty of a severity level 9, nonperson felony; or
- (3) of less than \$1,000 shall be guilty of a class A nonperson misdemeanor.

History: L. 1953, ch. 54, § 5, L. 1994, ch. 348, § 1; L. 2006, ch. 194, § 14; May 25.

16-306: Same; injunction. In addition to other remedies, an action of injunction may be brought and maintained by the state of Kansas to enjoin the violation of this act.

History: L. 1953, ch. 54, § 6; June 30.

16-307: Same; severability. The provisions of this act shall be separable, and in case any provision or part thereof shall be held to be unconstitutional or invalid for any reason, the same shall not be held to affect any other paragraph, provision or part of this act.

History: L. 1953, ch. 54, § 7; June 30.

16-308: Same; administration of funds; payment into trust fund; investment; payment of administrative costs and taxes; prior existing trusts to comply. Any contract not providing for administration of payments thereunder in accordance with K.S.A. 16-302 and 16-303, and amendments thereto, shall provide for payment of all money received by the seller to a corporate trustee designated in a trust indenture or indentures referred to in such contract. All money so paid to and held by such corporate trustee, as well as all interest and earnings thereon, shall be held by such corporate trustee for the benefit of the purchaser in a separate account in the name of the purchaser, except that such trust indenture may provide that the funds in such account and in all other separate accounts covered by the same trust indenture may be invested collectively in a fund maintained by such corporate trustee in its capacity as such, if such fund is administered as required by the provisions of K.S.A. 58-1201 et seq. and amendments thereto; that all participations in the collective investment fund shall be on the basis of a proportionate interest in all of the assets in the fund; that not less frequently than once during each period of six months the corporate trustee shall determine the value of the assets in the fund; and the trust indenture may authorize the corporate trustee to charge the reasonable expenses of administering the trust against the income from the fund, including taxes imposed upon the fund or its income, the expenses of audits performed by independent public accountants and the reasonable expenses

incurred in servicing mortgages held by the fund, but no compensation shall be paid for services performed for the corporate trustee by the seller or by anyone affiliated or connected with the seller which exceeds an annual fee of 1% of the current fair market value of the trust to be computed and distributed on either an annual, quarterly or monthly basis. Any seller who has presently established any trust for the purpose of complying with K.S.A. 16-301 to 16-307, inclusive, and amendments thereto, which does not comply with the applicable provisions of this act, is hereby given a period of one year after the effective date of this act within which to amend the trust indenture applicable thereto, to alter its portfolio of investments and to consummate any other changes necessary to comply with this act.

History: L. 1973, ch. 86, § 4; L. 1993, ch. 131, § 1; July 1.

16-309: Same; doing business in state defined; nonresidents subject to personal service outside state. Any person, association, partnership, firm or corporation shall be doing business in this state if they: Are in any way involved in or connected with the negotiation of any contract; enter into any contract as seller or are to perform any service or services covered by any such contract; receive, either as payee or as agent or as a bailment, any money paid by a purchaser on any contract; or solicit any resident of this state while such resident is in this state. If any nonresident person, association, partnership, firm or corporation is doing such business in this state, they shall be subject to the personal service of process outside this state as provided by K.S.A. 60-308.

History: L. 1973, ch. 86, § 6; July 1.

16-310: Same; audit of accounts or trusts by secretary of state; redeposit of improperly paid moneys; actions by attorney general; funds held under agreements not subject to legal process; notice of intent to sell and engage in agreements; obstructing or refusing to submit to examination; audit fee. (a) The secretary of state, or the secretary's representative, shall audit in accordance with this subsection all accounts or trusts of each prearranged funeral agreement, plan or contract entered into pursuant to K.S.A. 16-301 *et seq.*, and amendments thereto. Audits under this section shall be conducted on a random basis and not more than 25 audits shall be conducted during any one calendar year, except that the secretary of state may conduct an audit under this section at any time upon receipt of a complaint. For such purposes, the secretary of state or the secretary's representative is authorized to administer oaths and to examine under oath the directors, officers, employees and agents of any seller of personal property or funeral or burial merchandise. Such examination may be reduced to writing by the person taking it and the examiner may make findings as to the condition of each account or trust examined. Accounting records and information required by this section shall be maintained in a format approved by the

secretary of state. For the purposes of such audits, the secretary of state may require any person or officer of a partnership, association, firm or corporation who sells such merchandise to furnish and submit the books, records, papers and instruments of such partnership, association, firm or corporation for examination.

(b) In the event the secretary of state determines that moneys have been improperly obtained from the account or trust by the seller of personal property or funeral or burial merchandise during the period covered by the audit, then the secretary of state may order the seller of personal property or funeral or burial merchandise to redeposit to the account or trust such moneys improperly withdrawn within 30 days.

(c) The attorney general, at the request of the secretary of state, may initiate an action to recover payments required to be redeposited to the account or trust under subsection (b), or to recover other moneys received or disbursed in violation of this act. In addition, the attorney general may seek to enjoin any violation of this act.

(d) In the absence of fraud, all funds held in an account or trust established pursuant to a prearranged funeral agreement, plan or contract shall not be subject to attachment, garnishment or other legal process, nor be seized, taken, appropriated or applied to pay any debt or liability of the seller of personal property or funeral or burial merchandise, buyer or beneficiary, by any legal or equitable process or by operation of law.

(e) No person, partnership, association, firm or corporation shall enter into any prearranged funeral agreement, plan or contract until such person, partnership, association, firm or corporation has filed with the secretary of state a notification of its intention to sell and engage in such prearranged agreements, plans or contracts. Such notice shall include the name of the person, partnership, association, firm or corporation, its principal place of business and the name and address of the bank or savings and loan association, trustee or trustees to be utilized under the provisions of this section.

(f) Whenever any person, partnership, association, firm or corporation refuses to submit the books, records, papers and instruments to the examination and inspection of the secretary of state, or of any of the secretary's representatives, or in any manner obstruct or interfere with the examination or audit authorized by this section, or refuse to be examined under oath concerning any of the affairs of its prearranged funeral agreements, plans or contracts, the secretary of state may request the attorney general to institute proceedings for the appointment of a receiver for such person, partnership, association, firm or corporation.

(g) Any person, partnership, association, firm or corporation which refuses or neglects to comply with the requirements of this act for a period of 90 days after demand to do so is made upon it by the secretary of state shall be subject to the penalties provided in K.S.A. 16-305, and amendments thereto. The attorney general, upon the request of the secretary of state, shall then begin an action for the appointment of a receiver for such person, partnership, association, firm or corporation and to dissolve the same.

(h) Whenever an audit is made pursuant to this section, the person, partnership, association, firm or corporation so audited shall pay to the secretary of state such expenses relating to the audit as assessed by the secretary of state pursuant to K.S.A. 75-442 and amendments thereto.

History: L. 1987, ch. 77, § 2; L. 1988, ch. 94, § 3; L. 1989, ch. 48, § 74; L. 1992, ch. 172, § 1; July 1.

CEMETERY MERCHANDISE CONTRACTS:

K.S.A. 16-320 through K.S.A. 16-334.

16-320: Cemetery merchandise contracts; definitions. The following definitions shall apply to this act:

- (a) "Cemetery merchandise" means burial vaults, grave liners, grave boxes, urns, memorials, markers, vases, memorial vases, tombstones, lawn crypts, niches and mausoleum spaces and all merchandise commonly sold or used in cemeteries. Caskets; grave lots, grave spaces; burial or interment rights; and developed or existing lawn crypts, mausoleum spaces or niches are not cemetery merchandise.
- (b) "Purchase price" means the gross amount, less sales tax, if any, to be paid for cemetery merchandise under the provisions of a prepaid merchandise contract. The purchase price does not include finance charges, sales tax, charges for real property interests or charges for credit life insurance.
- (c) "Prepaid merchandise contract" means any agreement for the sale of cemetery merchandise by a cemetery corporation which requires payment of the purchase price, in whole or in part, prior to delivery of the cemetery merchandise, which agreement is entered into from and after the effective date of this act.
- (d) "Cemetery corporation" means any individual or entity required to maintain permanent maintenance funds under the provisions of K.S.A. 17-1312f, and amendments thereto.
- (e) "Minimum funding requirement" means that portion of the purchase price equal to 110% of the wholesale cost f.o.b. to the cemetery corporation of the cemetery merchandise covered in a prepaid merchandise contract. Wholesale costs shall be determined by the cemetery corporation on the basis of such quotations and price lists as are available to the cemetery.

History: L. 1982, ch. 96, § 1; L. 1987, ch. 77, § 1; July 1.

16-321: Same; cemetery merchandise trust fund; establishment; deposit of moneys. (a) Any cemetery corporation entering into any prepaid merchandise contract shall establish and maintain a cemetery merchandise trust fund under K.S.A. 16-322. All prepaid merchandise contracts shall be in writing.

(b) A cemetery corporation entering into a prepaid merchandise contract shall be entitled to retain all of the purchase price under the prepaid merchandise contract until it has received an amount equal to 35% of the purchase price of the cemetery merchandise sold in a prepaid merchandise contract.

(c) After the cemetery corporation has received the amounts it is entitled to receive under subsection (b) of this section, all payments of the purchase price to the cemetery corporation under a prepaid merchandise contract shall be deposited by the cemetery corporation in a cemetery merchandise trust fund until such time as the requirements of subsection (d) of this section have been satisfied or delivery is made of the cemetery merchandise. Thereafter, all payments of the purchase price in excess of the minimum funding requirements may be retained by the cemetery corporation. Deposits shall be made within 10 business days after the moneys are received.

(d) Annually, as of December 31, each cemetery corporation shall determine the wholesale cost for all cemetery merchandise covered by a prepaid merchandise contract for which funds are then held in a cemetery merchandise trust or in an individual merchandise account. If the amounts held with respect to a prepaid merchandise contract exceed the minimum funding requirement the excess shall be paid by the trustee of the cemetery merchandise trust to the cemetery corporation. In such event, no further deposit shall be required with respect to the prepaid merchandise contract until such time as the amounts held no longer exceed the minimum funding requirement. If the minimum funding requirement is not satisfied, no amount shall be paid to or withdrawn by the cemetery corporation and the cemetery corporation shall continue or shall resume, as the case may be, making the deposits required by subsection (c) of this section.

History: L. 1982, ch. 96, § 2; Jan. 1, 1983.

16-322: Same; trust fund; requirements; disbursements. (a) The cemetery corporation shall establish and maintain a cemetery merchandise trust fund with a bank, trust company or savings and loan association having trust powers. A copy of each contract or a written notice containing all relevant information regarding such prepaid merchandise contract for which deposits are made shall be furnished financial institutions. The institutions shall serve as trustees for the purposes of this act. Deposits to such fund shall be carried in the name of the cemetery corporation and the amounts deposited therein may be commingled, but the accounting records shall establish a separate account for each prepaid merchandise contract and shall show the amounts deposited, and the income or loss accruing thereon, with respect to each prepaid merchandise contract. The trustee shall reimburse the cemetery corporation for all income taxes

and costs incurred with respect to the operation of such fund, and the trustee shall be reimbursed from the earnings of such fund for all reasonable costs incurred in serving as trustee, including a reasonable fee for its services. The taxes and costs shall be paid from earnings of the fund prior to the allocation of earnings to the individual accounts.

(b) No part of the moneys required by K.S.A. 16-321, and amendments thereto, to be held under a prepaid merchandise contract shall ever be used for any purpose other than investment as authorized by K.S.A. 16-324, and amendments thereto, until delivery of the merchandise is made. With respect to any cemetery merchandise which is not affixed to real property, delivery shall occur when physical possession is tendered to the purchaser, and a bill of sale or similar instrument of title is delivered to the purchaser. With respect to cemetery merchandise which is affixed to realty, delivery shall occur when construction or permanent installation of the merchandise has been completed. Upon delivery of the cemetery merchandise, the cemetery corporation shall present the trustee with a verified statement that delivery has been made. Upon such presentation the trustee shall pay to the cemetery corporation the amount of any funds held in trust with respect to the cemetery merchandise delivered and no further deposits shall be made with respect to such cemetery merchandise.

History: L. 1982, ch. 96, § 3; L. 1989, ch. 48, § 75; L. 1994, ch. 34, § 1; July 1.

16-323: Same; penalty. Any person who violates any provision of this act shall be deemed guilty of a class A misdemeanor.

History: L. 1982, ch. 96, § 4; Jan. 1, 1983.

16-324: Same; trust fund established in trust company or federally insured institution authorized to do business in state. A cemetery merchandise trust fund established pursuant to K.S.A. 16-321 or 16-322, and amendments thereto, shall at all times be in the custody of a trust company or a federally insured bank or savings and loan association which is authorized to do business in this state. Any cemetery merchandise trust funds may be invested, reinvested, exchanged, retained, sold and managed in the manner and subject to the requirements of K.S.A. 58-24a02, and amendments thereto, and, at the election of the trustee, as a part of common trust funds.

History: L. 1982, ch. 96, § 5; L. 1989, ch. 48, § 76; L. 1994, ch. 34, § 2; L. 2001, ch. 75, § 5; July 1.

16-325: Same; secretary of state to audit cemetery merchandise trusts. The secretary of state, or the secretary's representative, shall, while auditing each cemetery corporation, pursuant to K.S.A. 17-1312a, and amendments thereto, audit the cemetery merchandise trusts required by this act, and approve the cemetery's determination of the wholesale costs under subsection (d) of K.S.A. 16-321, and amendments thereto. For such purposes, the secretary of state or the secretary's representative, is authorized to administer oaths and to examine under oath the directors, officers, employees and agents of any cemetery corporation. Such examination may be reduced to writing by the person taking it and the examiner may make findings as to the condition of each trust fund examined. For the purposes of such audits, the secretary of state may require any officer of a cemetery corporation to furnish and submit the books, records, papers and instruments of such cemetery corporation to the examination.

History: L. 1982, ch. 96, § 6; L. 1988, ch. 94, § 4; July 1.

16-326: Same; redeposit of improperly paid moneys by trustee. (a) In the event the secretary of state determines that moneys have been improperly paid by the trustee to the cemetery corporation during the period covered by the audit, then the secretary may order the cemetery corporation to redeposit to the trust such moneys improperly withdrawn within 60 days.

(b) The attorney general, at the request of the secretary of state, may initiate an action for an accounting of the cemetery merchandise trust fund by the trustee.

(c) If it is determined that the cemetery merchandise trust fund is underfunded due to inadequate deposits or unauthorized distributions, the cemetery corporation may propose and implement a plan for correcting the fund's deficiencies, subject to the approval of the secretary of state.

(d) In addition to other provisions and authority granted under law, the secretary of state shall have the authority to equitably resolve the results of an audit.

History: L. 1982, ch. 96, § 7; Jan. 1, 1983.

16-327: Same; redeposit of moneys; action by attorney general. The attorney general, at the request of the secretary of state may initiate an action to recover payments required to be redeposited to the trust under K.S.A. 16-326, or to recover other moneys received or disbursed in violation of this act. In addition, the attorney general may seek to enjoin any violation of the act.

History: L. 1982, ch. 96, § 8; Jan. 1, 1983.

16-328: Same; funds in trust not subject to legal process. In the absence of fraud, all funds held in a cemetery merchandise trust shall not be subject to attachment, garnishment or other legal process, nor be seized, taken, appropriated or applied to pay any debt or liability of the cemetery corporation, buyer or beneficiary, by any legal or equitable process or by operation of law.

History: L. 1982, ch. 96, § 9; Jan. 1, 1983.

16-329: Same; notice of intent to sell merchandise contracts filed with secretary of state. No cemetery corporation shall enter into any prepaid merchandise contract until such corporation has filed with the secretary of state a notification of its intention to sell and engage in such prepaid merchandise contracts. Such notice shall include the name of the cemetery corporation, its principal place of business and the name and address of the trustee or trustees to be utilized under the provisions of this act.

Accounting records and information required by this act shall be maintained in a format approved by the secretary of state. A report of the merchandise trust account shall be required of the cemetery corporation annually as part of the corporation's annual report on a form provided or approved by the secretary of state.

History: L. 1982, ch. 96, § 10; Jan. 1, 1983.

16-330: Same; refusal to submit to audit; attorney general. Whenever any officer of any cemetery corporation refuses to submit the books, records, papers and instruments of such cemetery corporation to the examination and inspection of the secretary of state, or of any of the secretary's assistants or examiners, or in any manner obstruct or interfere with the examination or audit of its cemetery merchandise trust fund or any audit made pursuant to subsection (d) of K.S.A. 16-321, or refuse to be examined on oath concerning any of the affairs of its cemetery merchandise trust fund, the secretary of state may request the attorney general to institute proceedings for the appointment of a receiver for such cemetery corporation.

History: L. 1982, ch. 96, § 11; Jan. 1, 1983.

16-331: Same; refusal to establish trust fund; forfeiture of corporate franchise. Any cemetery corporation which refuses or neglects to establish or maintain a cemetery merchandise trust fund in accordance with the requirements of this act for a period of 90 days after demand to do so is made upon it by the secretary of state shall be deemed to have forfeited its corporate

franchise. The attorney general, upon the request of the secretary of state, shall then begin an action for the appointment of a receiver for such cemetery corporation and to dissolve the same.

History: L. 1982, ch. 96, § 12; Jan. 1, 1983.

16-332: Same; contract provisions. Any cemetery corporation entering into a prepaid merchandise contract shall provide in such contract that:

- (a) A purchaser, under a prepaid merchandise contract covered in this act who permanently moves to another state in the United States, may direct that the merchandise, so long as the same is not a part of nor affixed to real estate, be delivered to a cemetery in the state of the purchaser's residence, except that the purchaser may be required to pay the additional transportation costs which exceed those the cemetery would have incurred to provide and deliver the merchandise to the seller cemetery; or
- (b) a purchaser who has entered into a prepaid merchandise contract covered by this act may, upon the purchaser permanently changing residence to a place more than 150 miles from the cemetery, cancel the contract upon written notice to the cemetery, which notice shall then be forwarded by the cemetery to the trustee of the cemetery merchandise trust fund. Upon receipt of such notice, the prepaid merchandise contract shall be cancelled, and the trustee, after deducting that contract's share of applicable costs and taxes provided for in K.S.A. 16-322, shall pay to the purchaser not less than 85% of the funds held in trust for the contract pursuant to this act. The balance shall be paid to the cemetery corporation and the trustee shall be discharged from further obligation as to such contract.

History: L. 1982, ch. 96, § 13; Jan. 1, 1983.

16-333: Same; not subject to 16-301 to 16-309. Sales of cemetery merchandise subject to this act shall be exempt from the provisions of K.S.A. 16-301 through 16-309, inclusive, and any amendments thereto.

History: L. 1982, ch. 96, § 14; Jan. 1, 1983.

16-334: Same; copy of trust document filed with secretary of state. Cemetery corporations subject to an audit by the secretary of state pursuant to K.S.A. 16-325, and amendments thereto, shall file, in the office of the secretary of state, a copy of the agreement or document which establishes the trust between the cemetery corporation and the trustee.

History: L. 1994, ch. 229, § 1; July 1.

CEMETERY PERMANENT MAINTENANCE FUNDS:

K.S.A. 17-308 through K.S.A. 17-312g.

17-1308: Same; plat of lots and deposits in permanent maintenance fund prerequisite to conveyance of lots. Before such corporation shall have the power to sell or in any manner convey, for burial purposes, any of the lands held by it, it shall cause such lands to be surveyed and platted into burial lots and said plat to be filed in the office of the register of deeds in the county wherein such lands are situated; and all conveyances of said lots shall be by reference to said recorded plat: *Provided*, That before any such corporation shall have power to sell or convey lands, acquired from and after the effective date of this act for the purpose of establishing or making an addition to any cemetery, it shall place and maintain ten thousand dollars (\$10,000) in the permanent maintenance fund established under the provisions of this act and an additional five hundred dollars (\$500) for each acre of land, or fraction thereof, in excess of twenty (20) acres acquired for such purposes; said deposits, prerequisite to selling or conveying lands, shall not be required to exceed thirty-five thousand dollars (\$35,000), but nothing herein shall be construed as affecting the requirements imposed on the permanent maintenance fund in K.S.A. 17-1311 and any amendments thereto: *Provided further*, That from and after July 1, 1969, no such corporation shall have power to sell or convey lands, acquired prior to the effective date of this act for the purpose of establishing or making an addition to any cemetery, until it shall comply with the requirements hereinbefore imposed on the permanent maintenance fund for lands acquired from and after the effective date of this act, but such compliance shall be required only as to such lands used to establish or make an addition to a cemetery and shall not be required as to land previously set aside for cemetery purposes if such corporation is maintaining a permanent maintenance fund and such fund at that time contains not less than ten thousand dollars (\$10,000).

History: L. 1901, ch. 102, § 2; R.S. 1923, 17-1308; L. 1968, ch. 330, § 2; July 1.

17-1309: Same; conveyance of lots. That upon complying with the requirements of the preceding section, such corporation shall have the power to convey, by deed or otherwise, the burial lots as shown on said recorded plats for burial purposes only, in accordance with such regulations and bylaws as may be established and adopted by said corporation.

History: L. 1901, ch. 102, § 3; March 22; R.S. 1923, 17-1309.

17-1310: Same; control of lands; replatting. That such corporation shall have complete management and control of all lands held, laid out and sold by it for cemetery purposes until such time as all the burial lots shall have been sold or until such time as said corporation shall be dissolved in the manner hereinafter set forth: *Provided*, That such corporation may replat any areas used for cemetery purposes in such a manner as to eliminate roads that have been platted but have not been actually constructed.

History: L. 1901, ch. 102, § 4; R.S. 1923, 17-1310; L. 1949, ch. 186, § 1; June 30.

17-1311: Same; permanent maintenance fund; requirements; use. A cemetery corporation shall maintain, in a trust company located within the state of Kansas, a state or national bank located within the state of Kansas, a state or federally chartered savings and loan association located within the state of Kansas or a federally chartered savings bank located within the state of Kansas, a percentage of the purchase price of each burial lot sold by it, or any payment on such burial lot, not less than 15% of such purchase price, for the permanent maintenance of the cemetery within which the burial lot lies, but the total amount set aside shall not be less than \$25 for each burial lot at the time of conveyance of such lot. Deposits to the permanent maintenance fund shall be made within 45 days of receipt of moneys for which deposits are required to be made. Moneys placed in such fund under the provisions of K.S.A. 17-1308, and amendments thereto, shall be credited for the purposes of fulfilling such requirement. Moneys in such fund may be held and invested to the same extent as is provided in K.S.A. 58-24a02, and amendments thereto, but the total amount of money invested in any mortgage upon real property shall not exceed an amount equal to 75% of the market value of such property at the time of such investment. The income of the permanent maintenance fund shall be used exclusively for the maintenance of the cemetery. No part of the principal of the fund shall ever be used for any purpose except for such investment. In no event shall any loan of the funds be made to any stockholder, officer or employee of such cemetery corporation, or to any person related, by blood or marriage, to a stockholder, officer or employee. The treasurer of such corporation may deposit, to the credit of such fund, donations or bequests for the fund and may retain property so acquired without limitation as to time and without regard to its suitability for original purchase. As used in this section, the term "burial lot" means a plotted space for one grave. Such maintenance shall include, but not be limited to, mowing, road maintenance and landscaping, but shall not include administrative costs, expense of audits or the portion of any capital expense for equipment used to maintain portions of a cemetery not sold for burial purposes or in use for grave sites.

History: L. 1901, ch. 102, § 5; R.S. 1923, 17-1311; L. 1931, ch. 147, § 1; L. 1963, ch. 138, § 1; L. 1968, ch. 330, § 3; L. 1971, ch. 71, § 1; L. 1978, ch. 76, § 1; L. 1985, ch. 91, § 1; L. 1989, ch. 48, § 77; L. 1994, ch. 229, § 4; L. 2001, ch. 75, § 6; July 1.

17-1311a: Same; penalties for misuse. (a) Misuse of the permanent maintenance fund or any money belonging thereto is using, lending or permitting another to use, moneys in the fund in a manner not authorized by law, by a custodian or other person having charge or control of such fund or moneys by virtue of his position.

(b) Misuse of the permanent maintenance fund is a severity level 7, nonperson felony.

History: L. 1971, ch. 71, § 2; L. 2007, ch. 198, § 1; May 24.

17-1312: Same; custody; requirements; limitations. The permanent maintenance fund required to be established by K.S.A. 17-1311, and amendments thereto, shall at all times be in the custody of a trust company located within the state of Kansas, a state or national bank located within the state of Kansas, a state or federally chartered savings and loan association located within the state of Kansas or a federally chartered savings bank located within the state of Kansas. Each cemetery corporation shall establish a trust for moneys deposited in the permanent maintenance fund in accordance with this section. If the market value of the trust is less than \$45,000, the trust may have an individual trustee so long as the trust's assets are maintained in a segregated account. If the market value of the trust is \$45,000 or more, the trustee shall be a trust company located within the state of Kansas, a state or national bank located within the state of Kansas, a state or federally chartered savings and loan association located within the state of Kansas or a federally chartered savings bank located within the state of Kansas. Any such trust company, bank, savings and loan association or federally chartered savings bank with which the custody of a permanent maintenance fund has been entrusted may invest, reinvest, exchange, retain, sell and manage the moneys within such fund. If the treasurer of any cemetery corporation shall entrust the custody of the permanent maintenance fund to a savings and loan association or associations or federally chartered savings bank or banks, the amount of moneys in the custody of any such association or savings bank shall not exceed the amount for which deposits in such savings and loan association or savings bank are insured by the federal savings and loan insurance corporation or other insurer approved by the state commissioner of insurance. If the treasurer of any cemetery corporation shall entrust the custody of the permanent maintenance fund to a bank or banks or federally chartered savings bank or banks, the amount of money in the custody of any such bank or savings bank shall not exceed the amount for which deposits in such bank or savings bank are insured by the federal deposit insurance corporation or other insurer approved by the state bank commissioner. Such trust company, bank, savings and loan association, federally chartered savings bank or individual trustee may serve without bond and

may be reasonably compensated for its services out of the income of the fund. It shall be a provision of any such trust agreement that no moneys, other than income from the trust, shall be paid over to the cemetery corporation by the trustee, except upon the written permission of the secretary of state.

History: L. 1901, ch. 102, § 6; R.S. 1923, 17-1312; L. 1968, ch. 330, § 4; L. 1978, ch. 76, § 2; L. 1985, ch. 91, § 2; L. 1989, ch. 48, § 78; L. 1994, ch. 229, § 5; July 1.

17-1312a: Registration of cemetery corporation with secretary of state; failure to register, penalty; annual statement; maintenance fund; audit or examination of accounts, assessment of expenses. (a) Each cemetery corporation formed under the laws of the state of Kansas and each foreign corporation granted a certificate of authority to own or operate a cemetery within the state of Kansas shall register with the secretary of state before commencing business in Kansas. Each cemetery corporation shall prepare and forward to the secretary of state at the time it is required to make an annual report under the Kansas general corporation code, or if no such report is required then on January 1 in each year, a statement verified by the treasurer of said corporation describing the corpus and any accumulated income on the preceding December 31, or on the last day of its fiscal year if it does not use the calendar year in its accounts, in each permanent maintenance fund established by said corporation, the cost and the market value on said date of each security then held in each such fund, and the income of and disbursements from each such fund during the calendar or fiscal year then ended. This statement shall otherwise be in such form as the secretary of state shall prescribe. Whenever the secretary of state shall determine that any cemetery corporation required by this act to be registered has failed or refused to do so, the secretary of state may notify the county attorney or district attorney of the county in which such cemetery corporation is located, and such county attorney or district attorney shall commence prosecution against such cemetery corporation. Any cemetery corporation which fails to register with the secretary of state shall be liable for a civil penalty of not to exceed \$1,000.

(b) Whenever and as often as deemed necessary, the secretary of state, or an employee designated by the secretary of state, may audit or otherwise examine any cemetery corporation books and accounts. Whenever such an audit or examination is so made, the cemetery corporation shall pay such expenses as shall be assessed by the secretary of state pursuant to K.S.A. 75-442.

History: L. 1968, ch. 330, § 5; L. 1974, ch. 95, § 1; L. 1978, ch. 76, § 3; L. 1988, ch. 94, § 5; July 1.

17-1312b: Audit or examination of books and accounts; examination of officers, employees and agents. The secretary of state, or his assistants or examiners, may make examinations or audits as provided in K.S.A. 17-1312a. For such purpose the secretary of state, his assistants and examiners, are authorized to administer oaths and to examine under oath the directors, officers, employees and agents of any cemetery corporation. Such examination may be reduced to writing by the person making it and may contain a statement of the condition of each permanent maintenance fund examined.

History: L. 1968, ch. 330, § 6; L. 1974, ch. 95, § 2; July 1.

17-1312c: Same; interference with or refusal to submit to examination; appointment of receiver. Whenever any officer of any cemetery corporation shall refuse to submit the books, records, papers and instruments of such cemetery corporation to the examination and inspection of the secretary of state, or any of his assistants or examiners, or in any manner obstruct or interfere with the examination or audit of its permanent maintenance funds, or refuse to be examined on oath concerning any of the affairs of its permanent maintenance funds, the secretary of state, with the concurrence of the attorney general, may institute proceedings for the appointment of a receiver for such cemetery corporation.

History: L. 1968, ch. 330, § 7; L. 1974, ch. 95, § 3; July 1.

17-1312d: Maintenance fund; failure to establish or maintain; forfeiture of franchise. Any cemetery corporation which shall refuse or neglect to establish or maintain a permanent maintenance fund in accordance with the requirements of this act for each cemetery owned by it for a period of ninety (90) days after demand to do so is made upon it by the secretary of state shall be deemed to have forfeited its franchise. The attorney general, upon the request of the secretary of state, shall then begin action for the appointment of a receiver for such cemetery corporation and to dissolve the same.

History: L. 1968, ch. 330, § 8; L. 1974, ch. 95, § 4; July 1.

17-1312e: Information and records of examination confidential; disclosure of certain information allowed. (a) Except as provided by this section, all information which the secretary of state shall gather or record in making an investigation and examination of any cemetery corporation shall be deemed to be confidential information, and shall not be disclosed by the secretary of state, any assistant, examiner or employee thereof, except to: (1) Officers of the cemetery corporation being audited; and (2) the attorney general, when in the opinion of the secretary of state the same should be disclosed.

(b) Upon request, the secretary of state may disclose to any person whether a cemetery corporation maintains a cemetery merchandise trust fund under K.S.A. 16-322, and amendments thereto, or a permanent maintenance fund under K.S.A. 17-1311, and amendments thereto, and whether such funds are maintained in compliance with the provisions of such laws.

History: L. 1968, ch. 330, § 9; L. 1974, ch. 95, § 5; L. 1978, ch. 76, § 4; L. 1994, ch. 229, § 6; July 1.

17-1312f: Application of act; exceptions. The provisions of K.S.A. 17-1308, 17-1311, 17-1312, and 17-1312a to 17-1312e, inclusive, and amendments thereto, shall apply to and be controlling upon every individual, firm, partnership or other organization hereafter selling or conveying land for cemetery purposes, and for this purpose the term "corporation" except where the context clearly indicates a different meaning shall mean and include such individuals, firms, partnerships or organizations. The provisions of this act shall not apply to: (a) Any municipality, corporation or quasi-corporation within the state of Kansas which is empowered to issue bonds in payment of which taxes may be levied; or

(b) any nonprofit organization formed primarily for religious purposes and constituting an established church and which sells or conveys cemetery lots solely to the members of its own church or to persons related by consanguinity, either lineal or collateral, by adoption, or by marriage to any such member; or

(c) any cemetery existing on March 1, 1968, located in a county designated as urban, and owned and operated on said date by a nonprofit organization; or

(d) any cemetery having a permanent maintenance fund of less than ten thousand dollars (\$10,000) which was organized prior to January 1, 1900, and which has been maintained and operated continuously since such date.

History: L. 1968, ch. 330, § 1; L. 1976, ch. 102, § 1; L. 1979, ch. 62, § 4; April 20.

17-349: Same; investment standards; acquisition of property. In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of any cemetery corporation now or hereafter organized as provided in K.S.A. 17-348, and amendments thereto, the governing board shall exercise such judgment and care under the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of its capital.

Within the limitations of the foregoing, the governing board of the cemetery corporation is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically but not by way of limitation, bonds, debentures and other corporate obligations, or loans secured by real estate mortgages, and stocks, preferred or common, which

persons of prudence, discretion and intelligence acquire or retain for their own account, and within the limitations of the foregoing, the governing board of the cemetery corporation may retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase.

History: L. 1951, ch. 215, § 2; L. 2008, ch. 44, § 1; July 1.